No. 972

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In the
Supreme Court of the United States
OCTOBER TERM, 1940

ALBERT ROBERTS, JR.,
Petitioner,

versus

BOARD OF PUBLIC INSTRUCTION FOR THE COUNTY OF BROWARD, STATE OF FLORIDA,
Respondent.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit and Brief in Support Thereof

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In the
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No.....

ALBERT ROBERTS, JR.,
Petitioner,

versus

BOARD OF PUBLIC INSTRUCTION FOR THE COUNTY OF BROWARD, STATE OF FLORIDA,
Respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

I.

Petitioner, Albert Roberts, Jr., seeks a Writ of Certiorari to the United States Circuit Court of Appeals, Fifth Circuit, to review its judgment rendered February 19th, 1941 (R 423-B), 117 Fed. (2d) 943, re-hearing denied March 20th, 1941, affirming a decree of the United States District Court for the Southern District of Florida, confirming a plan of composition filed under the provisions of the Municipal Bankruptcy Act (11 U. S. C. A. 401-403).

II.

Jurisdiction of this court is asserted under the judicial code, Sections 240 and 262, as amended, U. S. C. A. Title 28, Sections 347 and 377; Chapter IV (Section 24 C) Bankruptcy Law, as amended (Chandler Act) U. S. C. A. Title 11, Section 47 and Rule 37, of this court.

239 U. S. 11, Central Trust vs. Lueders.

191 U. S. 115, Holden vs. Stratton.

III.

Summary and Brief Statement

NOTE: The complete record is comprised of two sections, Nos. 9381 and 9596. In referring herein to the records, the proceedings under No. 9381 will be designated "A" (thus 15-A) and those under No. 9596 as "B" (thus R 15-B). (All emphasis ours, except where otherwise designated.)

On June 16, 1939, the Board of Public Instruction of Broward County, Florida, filed a petition in the United States District Court under the provisions of Chapter IX of the Bankruptcy Act (11 U. S. C. A. 401-403) for approval of a plan of composition of certain of its debts (R 1/11-A). On May 2, 1939, prior to any proceeding in court, the board contracted with one, Ralph Horton, to act as its "Refunding Agent" (R 149-B et seq.). The Agent was to have complete charge of the refunding, was to furnish the attorneys for the Board in carrying the proceedings through, was to pay the fees and costs for the validation of the refunding bonds, the approving attorneys opinion, and all costs incurred in formulating and carrying out the plan of composition (R 354-B). For these services, if the plan was con-

summated through bankruptcy proceedings, a fee to be *paid from* the "B. P. I. Bond Fund" and the "B. P. I. Homestead Levy Fund" equal to twenty (20) per cent of the face value of the coupons and interest maturing before October 1, 1939. Refunding bonds were to be issued for the outstanding principal indebtedness, and the unpaid interest and interest coupons to October 1, 1939, were to be surrendered and wiped out. The fund to service the refunding bonds was to be paid solely from taxes levied under the authority of Article XII, Section Eight of the Constitution of Florida (R 19-A). This particular fund was divided into two separate components, one of which, the "B. P. I. Bond Fund", was comprised of taxes levied on property not exempt by the Homestead Amendment to the Constitution of Florida, (R 19-A), and another, the "B. P. I. Homestead Levy Fund", a fund payable solely from taxes levied on properties which were *exempt* from all taxation by Article X, Section Seven, of the Constitution of the State of Florida, (the so-called "Homestead Amendment" adopted November 6, 1934). The original bonds were issued prior to 1934, hence the refunding bonds carried the same pledge to levy taxes on properties exempt by the Homestead Amendment.

Petitioner filed his sworn proof of claim (R 62-63-B) showing that he was the owner of Twelve Thousand Five Hundred and Ten Dollars ($12,510.00) in face amount of coupons of one of the issues being composed in the proceedings (Board of Public Instruction Bonds, dated October 1, 1927). He filed his answer in due time, objecting that the plan would be unfair to him in that he would receive nothing for his claim of $12,-510.00. In the proceedings, the Board filed an objec-

tion to that part of Petitioner's claim in the face amount of $5,070.00, being the amount of coupons detached from Bond Nos. 66 to 78 incl. The objection to this part of the claim was grounded on the theory that a judgment had previously been rendered in favor of the Board in an action in which the bonds were used to evidence a claim (R 58-A) and that the judgment was res adjudicata of the invalidity of the bonds. Other bonds of same issue were recognized as valid. *No objection was at any time interposed by any person, including the Board, to the other part of Petitioner's claim in the face amount of $7,440.00, and the master specifically made a finding allowing the claim in that amount (R 241-B). The court in the interlocutory decree confirmed the master's allowance of the claim (R 394-B, R 263-B).*

In support of his objection to that part of Petitioner's claim in the face amount of $5,070.00 (coupons from bonds 66 to 78 incl. of the 10-1-27 issue) the attorney for the Board filed in evidence, over the objection of the then attorney for the Petitioner (R 85/87-B) a copy of the judgment and verdict in a case rendered on April 5, 1934, in the United States District Court for the Southern District of Florida, where one N. A. Turner, trustee, was plaintiff, and the Board was defendant. Specific objection was made to the introduction of the verdict and judgment without the whole file (R 85/87-B). The Turner suit was an action on the common counts—no action was ever instituted on the bonds or the coupons—the sole use made of the securities in that proceeding was to evidence the debt which the Board denied in that proceeding and now admits in this action. The District Judge (Ritter) in the Turner

action, directed a verdict for the defendant on the ground that the *debt* evidenced by the 10-1-27 issue of bonds was prohibited by the Constitution of Florida, and therefore there was not even an implied promise to repay the monies. The case was appealed to the Circuit Court of Appeals for the Fifth Circuit, which sustained the lower court on a point of procedure (75 F (2d) 147).*

The Petitioner did not produce further evidence to sustain his acquisition and ownership of the $7,440.00 face amount of coupons, other than his sworn proof of claim, after it had been allowed by the master (R 241-B), nor was there any occasion for him to do so because neither the Board nor any other person objected at any time during the proceedings to the allowance of the $7,440.00 claim; *and to the very end of the case, the claim stood as an allowed claim.* After the case was closed, the master filed his final report. He found (R 228/238-B) that the plan of composition was fair and equitable as a matter of law, even if it did discriminate against the Petitioner as the holder of interest coupons (R 236-B) alone. As to the $7,440.00 claim which *had been allowed* by the master and to which no objections had been interposed by any party, the master determined that the appellant had not explained the bona fides of his acquisition of such coupons and could not

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*The opinion reads as follows:

"Issue was joined in an action for money had and received, and the trial resulted in a directed verdict and judgment for the defendant. The plaintiff appeals on the theory that upon the evidence submitted, it was error for the trial court to direct a verdict against him. But the transcript of record contains no bill of exceptions, and so we are unable to determine what evidence the trial court acted upon or had before it. In this state of the record, the judgment must be affirmed."

object to the plan even if it did discriminate against him. The master further found that the Board was "authorized by law" to take all action necessary to be taken by it to carry out the plan (R 243-B) and recommended, as the plan provided, that the refunding agent be paid for his services and expenses the sum of Thirty-Five Thousand Three Hundred Sixty-Two Dollars and Ninety-Two Cents ($35,362.92). This fee and costs of the "Refunding Agent" was to be paid over a period of five years, from the two funds set up for the benefit of the bondholders, to wit—from the "B. P. I. Bond Fund" (a fund from taxes levied against all property in the county not exempt by the Homestead Amendment to the Florida Constitution) and the "B. P. I. Homestead Levy Fund" (a fund from taxes levied solely on properties exempt from all taxation by the so-called "Homestead Exemption" amendment to the Florida Constitution in 1934). The master's report was confirmed and on February 18, 1940, the interlocutory decree was entered by the court.

IV.

The Questions Presented

1.

In a composition proceeding under the Municipal Bankruptcy Act (11 U. S. C. A. 401-403) where the master allows the sworn uncontradicted claim of a creditor (the court confirms the allowance of the claim in the interlocutory decree), and to which claim no objection was filed by any party and to the very end of the case the claim stood as an allowed claim, then after the case is closed and on the final report, the master determines that, notwithstanding the allowance of the

claim, the claimant, not having explained the bona fides of the acquisition of his claim, has no standing in court to object to the discrimination of the plan against him—was not this procedure such a departure from the usual and accepted course of judicial proceedings as to deny the creditor his property without due process of law?

2.

Is a Board of Public Instruction in the State of Florida "authorized by law" as required by 11 U. S. C. A. 403 (e) (6) to carry out a plan of composition which contains a "fiscal agency" contract, the cost of which is to be paid from funds set up for the bondholders, and from funds collected under authority of Article XII Section Eight of the Florida Constitution for the sole benefit of the public free schools, and from funds collected by taxing "Homestead exempt" properties (properties exempt from all taxation) when under the law of the State of Florida, as enunciated by the Supreme Court of Florida (a) the "fiscal agency" contract is illegal and void; (b) the assessment of the fiscal agents costs and fees from funds set up for the holders of refunding bonds is illegal and void; (c) funds collected under authority of Article XII Section Eight of the Constitution can never be diverted from the public free schools; and (d) the assessment of the costs of the "fiscal agency" contract against Homestead exempt property is contrary to the Constitution and law of the State of Florida.

3.

In a proceeding for a composition of debts under the provisions of the Municipal Bankruptcy Act (11 U. S. C. A. 401-403) is the Federal Court bound by the de-

cisions of the State Court holding that, in substantiating a plea of res adjudicata, the introduction in evidence of a judgment, without the complete record, is insufficient as a matter of law, or may the Federal Court make an independent determination of the point, contrary to the decisions of the court of last resort in the state in which the proceeding is being instituted?

V.

Reasons Suggesting the Necessity for the Writ of Certiorari

The following reasons indicate that the points involved in this case are of sufficient importance to justify the issuance of a Writ of Certiorari:

1.

The procedure followed in the trial of the case, sanctioned by the Circuit Court of Appeals, in which the master specifically allowed that part of the Petitioner's claim in the sum of Seven Thousand Four Hundred Forty Dollars ($7,440.00) (R 241-B) (the court in the decree confirmed the allowance by the master (R 394-B, R 263-B) and to which claim no objection was raised by the Petitioner or any other party, and to the very close of the case the claim stood as an allowed claim, and then after the case was closed the master in his final report, notwithstanding the fact that his claim had been allowed, determined that the Petitioner, not having produced evidence to establish the bona fides of the acquisition of his claim, could not complain of the discrimination of the plan against him, was such a departure from the usual and accepted judicial pro-

cedure as to deny the Petitioner his property without due process of law.

Sanders v. Shaw, 244 U.S. 317, 61 L.Ed. 1163, 1165, 37 S.Ct. 638

Snyder v. Mass., 291 U.S. 128, 78 L.Ed. 689, 54 S.Ct. 330, 90 A.L.R. 575

Bandim Petroleum Co. v. Superior, 284 U.S. 8, 19, 76 L.Ed. 136, 144, 52 S.Ct. 103, 78 L.Ed. 826

Georgia R. & Electric Co. v. Decatur, 295 U.S. 165, 79 L.Ed. 1365, 1370, 55 S.Ct. 701

2.

The decision of the Circuit Court of Appeals is in conflict with the decisions of this court, Case v. Los Angeles Lumber Co., 308 U. S. 106; American United Life Insurance Co. v. Avon Park, 85 L.ed., 112.

3.

The lower court and the U. S. Circuit Court of Appeals failed to follow the decisions of the court of last resort of the State of Florida in determining whether or not the Petitioner was "authorized by law" as required by the Municipal Bankruptcy Act (11 U.S.C.A. 403 (6)) to carry out the provisions of the plan of composition.

(a) The part of the plan comprising the "fiscal agency" is illegal and void.

Taylor v. Williams, 195 So. 175, 184, 142 Fla. 402

W. J. Howey Co. v. Williams, 195 So. 181, 184, 142 Fla. 415

Taylor v. Williams, 196 So. 214, 142 Fla. 756

Motes v. Putnam County, 196 So. 465, 143 Fla. 134

State v. City of Fort Myers, 198 So. 814, adv. op.

(b) The plan authorizing the payment of the fees and expenses of the "fiscal agency" from funds specifically set up for the bondholders is contrary to the decisions of the court of last resort of the State of Florida.

Pierce v. Isaac, 135 Fla. 101, 184 So. 669

Motes v. Putnam County, 196 So. 465, 143 Fla. 134

Taylor v. Williams, 196 So. 214, 142 Fla. 756

(c) That part of the plan authorizing the fees and expenses of the "fiscal agent" to be paid from funds collected under authority of Article XII Section Eight of the Constitution of the State of Florida, is contrary to the Constitution and the decisions of the Supreme Court of the State of Florida.

Barrow v. Moffett, 95 Fla. 111, 116 So. 71

State v. L'Engle, 40 Fla. 392, 24 So. 539

State v. Board of Public Instruction for Indian River County, 90 Fla. 1152, 125 So. 357

Board of Public Instruction v. Kennedy, 109 Fla. 153, 147 So. 250

Bryan v. Board of Public Instruction for Broward County, 197 So. 698, 197 So. 699

(d) That part of the plan authorizing the fees and expenses of the "fiscal agent" to be paid from the "B. P. I. Homestead Levy Fund" (funds collected from

properties exempt from all taxation by the Homestead Amendment to the Florida Constitution in 1934) is contrary to the decisions of the Supreme Court of the State of Florida.

State v. West Palm Beach, 127 Fla. 849, 174 So. 337

Coral Gables v. State, 128 Fla. 878, 176 So. 43

Groves v. Board of Public Instruction for Manatee County 109 F (2d) 522

4.

The decision of the United States Circuit Court of Appeals in confirming the lower court's determination of the sufficiency of proof to substantiate a plea of res adjudicata, is contrary to the law of Florida as announced in the decisions of the Supreme Court of the State of Florida.

Bell v. Niles, 61 Fla. 114, 55 So. 392

Clem v. Meserole, 44 Fla. 234, 32 So. 815, 103 Am. S. R. 145

WHEREFORE, this Petitioner respectfully prays that a Writ of Certiorari be issued out of and under the seal of this honorable court, directed to the Circuit Court of Appeals, commanding that court to certify to and to send to this court for its review and determination, on a day to be therein named, the full and complete record of the transcript and record in the proceedings in the case numbered and determined on this docket "No. 9596", Albert Roberts, Jr., Appellant, v. Board of Public Instruction for the County of Broward, State of Florida, Appellee, and that the

said decree of the Circuit Court of Appeals may be reversed by this honorable court, and the petitioner may have such other and further relief in the premises as to this honorable court may seem meet and just.

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